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LLP

November 1, 2005

Hon. Liane M. Randolph, Chair  
Hon. Sheridan Downey III, Commissioner  
Hon. Philip Blair, Commissioner  
Hon. Ray Remy, Commissioner  
Hon. Gene Huguenin, Commissioner  
Fair Political Practices Commission  
428 J. Street, Suite 620  
Sacramento, CA 95814

Re: Agenda Item No. 6 – November 3, 2005 Agenda

Dear Chairwomen and Commissioners:

On behalf of the California Democratic Party ("CDP"), I submit the following comments on the proposed Advisory Opinion Request to the Federal Election Commission. This item is listed as Agenda Item No. 6 on the November 3, 2005 meeting agenda and concerns the issue of preemption of California rules for reporting mixed expenditures by political party committees on Federal, state and local elections.

CDP continues to believe that a regulation mandating political party committees to disclose the state and local portion of allocated expenditures paid for by a Federal committee is unnecessary. Particularly, a regulation as comprehensive as proposed Regulation 18530.3 is overbroad. As a consequence, any request for an advisory opinion is also unnecessary.

Instead, CDP would encourage the Commission to simply advise political party committees to allocate and report any portion of Federal expenditures benefiting non-Federal candidates and ballot measures on Schedule D of FPPC Form 460. CDP believes the FPPC's interest in ensuring disclosure of state and local activity would be satisfied by such a simple approach without overburdening political party committee treasurers with a complex and complicated reporting scheme requiring allocation and disclosure of contributions and expenditures already reported to the Federal Election Commission. Moreover, this approach avoids an obvious Federal preemption issue.

If the FPPC intends to go forward with an FEC advisory request, then the request should make explicit the Commission's desire to require California political party committees to disclose contributions and expenditures regulated and reported under Federal law. The current draft advisory opinion, in our opinion, does not directly do that. Instead the letter makes reference to the *Bowling* advice letter and then attempts to justify state regulation of Federally-regulated activity. Despite the expansive impact of proposed Regulation 18530.3, the draft Advisory Opinion Request does not address those important issues that would be preempted by Federal law.

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CDP continues to believe that the FPPC would be preempted in any effort to require political party committees to allocate and disclose contributions and expenditures now regulated by Federal law. Title 2, USCA, Section 453, provides that the FECA "supersede[s] and preempt[s] any provision of State law with respect to election to Federal office." The Federal Election Commission (FEC) has issued a variety of advisory opinions interpreting Section 453's preemption of such state regulations. The FEC has stated that "[b]y their very nature, the allocable expenses of a State party committee, as distinguished from funds raised for and spent solely for the support of a non-Federal candidate, are intertwined with, and can affect, Federal election activity." (FEC Advisory Opinion, 2000-24.) Therefore, the FEC has concluded that state efforts to regulate political party committees in this way are preempted by Federal law. (*Id.*)

Federal preemption is even clearer since the Bipartisan Campaign Reform Act of 2002 (BCRA) went into effect. BCRA "federalized" some of the activities formerly believed by many, including the undersigned, to be non-Federal activities or the state share of joint Federal/state election activities. BCRA defined "federal election activity" to include voter registration within 120 days of a Federal election, voter identification, get-out-the-vote activity, generic campaign activity and public communications that refer to a clearly identified candidate for Federal office, regardless of whether a state or local candidate or measure is also mentioned or identified.

In summary, CDP believes the current approach is unnecessary. Instead, CDP encourages the Commission to adopt a less complex approach by advising political party committees to disclose any Federally-funded support of state and local candidates and ballot measures through disclosure on Schedule D of the FPPC Form 460.

If the FPPC continues to support the concepts of proposed Regulation 18530.3 beyond that of disclosing on Schedule D, then the Advisory Opinion Request should be rewritten to appropriately ask the FEC whether the broad reach of requiring California political party committees to allocate and disclose Federally-regulated contributions and expenditures is preempted by Federal law. The current draft does not do that.

Very truly yours,

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